

STATE OF MICHIGAN
COURT OF APPEALS

In re SLADEK/GARY, Minors.

UNPUBLISHED
February 11, 2021

No. 353975
Grand Traverse Circuit Court
Family Division
LC No. 16-004255-NA

Before: GLEICHER, P.J., and K. F. KELLY and RIORDAN, JJ.

PER CURIAM.

Respondent-mother appeals as of right the circuit court order removing from her custody her two minor children, AES and EPG. Respondent argues that the circuit court denied her due process by refusing to adjourn the removal hearing despite having agreed to adjourn the preliminary hearing. Alternatively, respondent contends that the circuit court erred by ordering removal of the minor children because doing so was not necessary to ensure their safety. We affirm.

I. BACKGROUND

Respondent is the mother of AES and EPG. In 2018, respondent entered into two stipulations relinquishing physical and legal custody of her children to their fathers. At the time of the events leading to the current petition, respondent did not have a legal right to parenting time with either child.

On May 30, 2020, the Department of Health and Human Services (DHHS) filed a petition to terminate the parental rights of respondent and the father of AES after AES was assaulted by his father. The petition alleged that although respondent was not present at the scene of the assault the child’s father sent respondent text messages and videos while the assault was ongoing, and yet respondent did not call the police or 911. AES’s father was arrested and jailed, and at the time of the removal hearing (June 4, 2020), AES resided with his paternal grandparents. EPG lived with his father, where he had been for at least two years.

Respondent was served with the current petition at 9:50 a.m. on June 4, 2020, with the preliminary hearing scheduled for 2:30 that same afternoon. Respondent’s counsel requested an adjournment of the preliminary hearing, which the court granted. Counsel contended that there

was no need for an immediate removal hearing, either, because both children were “safe in [their] current placements.” Counsel urged that “the issue of removal could be taken up at the adjourned preliminary hearing.” The court proceeded with the removal hearing over counsel’s objection. After hearing testimony from a Child Protective Services (CPS) worker, the court ordered the removal of both children from respondent’s custody. This appeal followed.

II. DISCUSSION

Respondent first argues that the circuit court violated her right to due process by declining to adjourn the removal hearing. While we sympathize with counsel’s request for more time to prepare, even if the court abused its discretion by denying an adjournment, the court’s decision to proceed was harmless under these circumstances.

“When the DHHS petitions for removal of a child under MCL 712A.2(b), the court must hold a preliminary hearing or hearings and may authorize the petition upon a showing of probable cause that 1 or more of the allegations in the petition are true and fall within the provisions of [MCL 712A.]2(b).” *In re Rood*, 483 Mich 73, 94-95; 763 NW2d 587 (2009) (quotation marks and citation omitted). “The preliminary hearing is governed by MCL 712A.13a and corresponding provisions of MCR 3.965.” *Id.* at 95. Under MCL 712A.13a(9) and the identical provision in MCR 3.965(C)(2), the court may order placement of a child into foster care if the court finds all of the following conditions:

- (a) Custody of the child with the parent presents a substantial risk of harm to the child’s life, physical health, or mental well-being.
- (b) No provision of service or other arrangement except removal of the child is reasonably available to adequately safeguard the child from the risk as described in subrule (a).
- (c) Continuing the child’s residence in the home is contrary to the child’s welfare.
- (d) Consistent with the circumstances, reasonable efforts were made to prevent or eliminate the need for removal of the child.
- (e) Conditions of child custody away from the parent are adequate to safeguard the child’s health and welfare.

Under MCR 3.965(B)(11), the court may adjourn the preliminary hearing for good cause shown, but “[i]f the preliminary hearing is adjourned, the court may make temporary orders for the placement of the child when necessary to assure the immediate safety of the child, pending the completion of the preliminary hearing.” MCR 3.965(C)(1) provides that if the children were “not released under subrule (B), the court shall receive evidence, unless waived, to establish that the criteria for placement set forth in subrule 3.965(C)(2) are present. The respondent shall be given an opportunity to cross-examine witnesses, to subpoena witnesses, and to offer proofs to counter the admitted evidence.”

Respondent had voluntarily relinquished physical and legal custody of the children two years before the removal hearing and had not seen EPG within that time. Maintaining the children

in the status quo was not an abuse of discretion. Moreover, the preliminary hearing was conducted one week later, and the children's placements were maintained.¹ Given that respondent had additional time to prepare to seek reconsideration of the issue of the children's placement, we are unable to discern any prejudice flowing from the circuit court's decision to go forward with the removal hearing.

Respondent next argues that the circuit court erred by finding that petitioner's evidence met the legal requirements for removal of the children.

We review de novo "the application and interpretation of court rules and statutes," *In re DMK*, 289 Mich App 246, 253; 796 NW2d 129 (2010), and review for clear error a circuit court's factual findings in a child protection proceeding. *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). "A trial court's decision is clearly erroneous if although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012) (quotation marks, citations, and alteration omitted).

The circuit court did not clearly err by finding that custody of AES and EPG with respondent presented "a substantial risk of harm" to their "life, physical health, or mental well-being." MCR 3.965(C)(2)(a). Respondent had not seen one of the children in two years, and any visits with the other child were conducted in violation of a court order prohibiting parenting time. The circuit court appropriately found a risk of harm under these circumstances. The same reasoning supported that failing to remove the minor children from respondent would be contrary to their welfare. MCR 3.965(C)(2)(c); MCR 3.965(C)(3). The circuit court did not clearly err by finding that reasonable efforts were made to prevent removal of the minor children because the DHHS had provided respondent with numerous services during the period prior to the removal of the children. Nor did the court clearly err by finding that "[n]o provision of service or other arrangement except removal of the child[ren] was] reasonably available to adequately safeguard the child[ren];" ordering removal ensured that the status quo would be maintained until further evidence could be presented. MCR 3.965(C)(2)(b). Because removing the children ensured that EPG would remain with his father and that AES would be placed with his grandparents, the circuit court did not clearly err by finding that the removal was an adequate safeguard. MCR 3.965(C)(2)(b).

We affirm.

/s/ Elizabeth L. Gleicher
/s/ Kirsten Frank Kelly
/s/ Michael J. Riordan

¹ We have not been provided with a transcript of the preliminary hearing. The order following the preliminary hearing reflects that respondent's parenting time remained suspended.